

§ 4043.27

29 CFR Ch. XL (7–1–11 Edition)

(b) *Initial information required.* In addition to the information in § 4043.3(b), the notice shall include—

(1) The date of any current inability and the amount of benefit payments not made;

(2) The next date on which the plan is expected to be unable to pay benefits, the amount of the projected shortfall, and the number of plan participants and beneficiaries expected to be affected by the inability to pay benefits;

(3) For a projected inability described in paragraph (a)(2), the amount of the plan's liquid assets at the end of the quarter, and the amount of its disbursements for the quarter; and

(4) The name, address, and phone number of the trustee of the plan (and of any custodian).

(c) *Waivers.* Notice is waived unless the reportable event occurs during a plan year for which the plan is described in section 302(d)(6)(A) of ERISA or section 412(1)(6)(A) of the Code.

§ 4043.27 Distribution to a substantial owner.

(a) *Reportable event.* A reportable event occurs for a plan when—

(1) There is a distribution to a substantial owner of a contributing sponsor of the plan;

(2) The total of all distributions made to the substantial owner within the one-year period ending with the date of such distribution exceeds \$10,000;

(3) The distribution is not made by reason of the substantial owner's death; and

(4) Immediately after the distribution, the plan has nonforfeitable benefits (as provided in § 4022.5) that are not funded.

(b) *Initial information required.* In addition to the information in § 4043.3(b), the notice shall include—

(1) The name, address and telephone number of the substantial owner receiving the distribution(s); and

(2) The amount, form, and date of each distribution.

(c) *Waivers.*—(1) *Distribution up to section 415 limit.* Notice is waived if the total of all distributions made to the substantial owner within the one-year period ending with the date of the distribution does not exceed the limitation (as of the date the reportable

event occurs) under section 415(b)(1)(A) of the Code (as adjusted in accordance with section 415(d)) when expressed as an annual benefit in the form of a straight life annuity to a participant beginning at Social Security retirement age (\$120,000 for calendar year 1996).

(2) *Plan funding.* Notice is waived if—

(i) *No variable rate premium.* No variable rate premium is required to be paid for the plan for the event year;

(ii) *No unfunded vested benefits.* As of the testing date for the event year, the plan would have no unfunded vested benefits if unfunded vested benefits were determined in accordance with the assumptions and methodology in § 4010.4(b)(2) of this chapter; or

(iii) *80-percent funded.* As of the testing date for the event year, the fair market value of the plan's assets is at least 80 percent of the plan's vested benefits amount.

(3) *Distribution up to one percent of assets.* Notice is waived if the sum of the values of all distributions that are made to the substantial owner within the one-year period ending with the date of the distribution is one percent or less of the end-of-year current value of the plan's assets (as required to be reported on the plan's Form 5500) for either of the two plan years immediately preceding the event year.

(d) *Form 1 extension.* The notice date is extended until 30 days after the plan's variable rate premium filing due date for the event year, provided that a waiver under any of paragraphs (c)(2)(i) through (c)(2)(iii) of this section would apply if "the plan year preceding the event year" were substituted for "the event year."

(e) *Determination rules.*—(1) *Valuation of distribution.* The value of a distribution under this section is the sum of—

(i) The cash amounts actually received by the substantial owner;

(ii) The purchase price of any irrevocable commitment; and

(iii) The fair market value of any other assets distributed, determined as of the date of distribution to the substantial owner.

(2) *Date of substantial owner distribution.* The date of distribution to a substantial owner of a cash distribution is

the date it is received by the substantial owner. The date of distribution to a substantial owner of an irrevocable commitment is the date on which the obligation to provide benefits passes from the plan to the insurer. The date of any other distribution to a substantial owner is the date when the plan relinquishes control over the assets transferred directly or indirectly to the substantial owner.

(3) *Determination date.* The determination of whether a participant is (or has been in the preceding 60 months) a substantial owner is made on the date when there has been a distribution that would be reportable under this section if made to a substantial owner.

§ 4043.28 Plan merger, consolidation, or transfer.

(a) *Reportable event.* A reportable event occurs when a plan merges, consolidates, or transfers its assets or liabilities under section 208 of ERISA or section 414(1) of the Code.

(b) *Waivers.* Notice is waived for this event. However, notice may be required under § 4043.29 (for a controlled group change) or § 4043.32 (for a transfer of benefit liabilities).

§ 4043.29 Change in contributing sponsor or controlled group.

(a) *Reportable event.* A reportable event occurs for a plan when there is a transaction that results, or will result, in one or more persons ceasing to be members of the plan's controlled group. For purposes of this section, the term "transaction" includes, but is not limited to, a legally binding agreement, whether or not written, to transfer ownership, an actual transfer of ownership, and an actual change in ownership that occurs as a matter of law or through the exercise or lapse of pre-existing rights. A transaction is not reportable if it will result solely in a reorganization involving a mere change in identity, form, or place of organization, however effected.

(b) *Initial information required.* In addition to the information in § 4043.3(b), the notice shall include—

(1) The name of each member of the plan's old and new controlled groups and the member's ownership relationship to other members of those groups;

(2) For each other plan maintained by any member of the plan's old or new controlled group, identification of the plan and its contributing sponsor(s) by name and EIN/PN or EIN, as appropriate; and

(3) A copy of the most recent audited (or if not available, unaudited) financial statements, and the most recent interim financial statements, of the plan's contributing sponsor (both old and new, in the case of a change in the contributing sponsor) and any persons that will cease to be in the plan's controlled group.

(c) *Waivers*—(1) *De minimis 10-percent segment.* Notice is waived if the person or persons that will cease to be members of the plan's controlled group represent a *de minimis* 10-percent segment of the plan's old controlled group for the most recent fiscal year(s) ending on or before the date the reportable event occurs.

(2) *Foreign entity.* Notice is waived if each person that will cease to be a member of the plan's controlled group is a foreign entity other than a foreign parent.

(3) *Plan funding.* Notice is waived if—

(i) *No variable rate premium.* No variable rate premium is required to be paid for the plan for the event year;

(ii) *\$1 million unfunded vested benefits.* As of the testing date for the event year, the plan has less than \$1 million in unfunded vested benefits; or

(iii) *No unfunded vested benefits.* As of the testing date for the event year, the plan would have no unfunded vested benefits if unfunded vested benefits were determined in accordance with the assumptions and methodology in § 4010.4(b)(2) of this chapter.

(4) *Public company/80-percent funded.* Notice is waived if—

(i) The plan's contributing sponsor before the effective date of the transaction is a public company; and

(ii) As of the testing date for the event year, the fair market value of the plan's assets is at least 80 percent of the plan's vested benefits amount.

(d) *Extensions.* The notice date is extended to the latest of—

(1) *Form 1 extension.* 30 days after the plan's variable rate premium filing due date for the event year if a waiver under any of paragraphs (c)(3)(i)